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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 635

UNITED STATES, EX REL. THE SHOSHONE INDIAN TRIBE AND THE ARAPAHOE INDIAN TRIBE OF THE WIND RIVER RESERVATION IN WYOMING, ROBERT N. HARRIS, A MEMBER OF THE SHOSHONE TRIBE AND NELLIE F. SCOTT, A MEMBER OF THE ARAPAHOE TRIBE, FORT WASHAKIE, WYOMING, *Petitioners,*

vs.

FRED A. SEATON, SECRETARY OF THE INTERIOR, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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vs.

FRED A. SEATON, SECRETARY OF THE INTERIOR, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioners, by their attorneys, pray that a writ of certiorari issue to review the judgment entered in this case on September 5, 1957, by the United States Court of Appeals for the District of Columbia Circuit, affirming the judgment against the petitioners rendered September 6, 1956, by the United States District Court for the District of Columbia.

Opinions Below

The opinion of the court of appeals is reported in — U.S. App. D.C. —, 248 F. 2d 154. It appears in the Appendix, *post*, pages 16-18. The respective opinions of the district court and of Secretary of the Interior McKay

appear in the Appendix, *post*, pages 18-19; 20-32. The case was disposed of on motion to dismiss, and the district court's judgment of dismissal appears at J. A. 19.

Jurisdiction

The judgment of the court of appeals was entered on September 5, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Question Presented

Whether the right of Indian tribes to receive the net proceeds from oil and gas deposits underlying ceded tribal land is such a benefical ownership of the oil and gas that the tribes must be given the profit of bonuses and other advantages through lease at public sale to the high bidder as required by the mineral leasing laws of the United States governing the leasing of Indian oil and gas or whether the tribes must be deprived of those benefits by noncompetitive leasing under the mineral leasing laws of the United States governing mineral deposits totally owned by the United States?

Statutes Involved

The full text of the Act of August 21, 1916, c. 363, 39 Stat. 519, and the Act of August 15, 1953, c. 509, 67 Stat. 592 (except for the land description), are set out in the Appendix, *post*, pp. 33-37.

Section 1 of the Mineral Leasing Act of February 25, 1920, c. 85, 41 Stat. 437, as amended by the Act of August 8, 1946, sec. 1, c. 916, 60 Stat. 950, 957 (30 U.S.C. 181), provides:

> That deposits of coal, phosphate, sodium, potassium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, * * * shall be subject to disposition in the form and manner provided by this Act * * *.

Statement

Petitioners are Indian Tribes of the Wind River Reservation, Wyoming, and the Tribes' representatives—all wards of the United States. They brought this suit to review the action of the Secretary of the Interior, who undertook to dispose of their oil and gas deposits underlying 161,520 acres of land, without competitive bids as if the deposits were public property of the United States (J.A. 1-7). The Secretary handled the purchase of surface rights on the 161,520 acres from the Tribes. He represented both the United States as buyer and the Tribes as sellers (S. Rept. No. 644, 83d Cong., 1st sess. (1953), p. 9). Throughout he knew the oil and gas underlying the surface were extremely valuable (J.A. 4-5). He also knew that the long-established federal law and policy was to lease Indian oil and gas deposits at public sale to the bidder paying the highest bonus for the lease (*infra*, pp. 7-8). Despite this, he made the oil and gas deposits in suit the only exception to that policy and leased them without competitive sales for nominal rents as if they were owned by the United States (J.A. 5). The court below approved this action (App., *post*, pp. 16-18).

The Shoshone and Arapahoe Tribes own the Wind River Reservation in Wyoming (J.A. 2).[1] Within the bounds of the Reservation, there is a federal reclamation project. The 161,520 acres in suit are broken into numerous small tracts spread through the project. The administrative control of the surface of the land was in the Secretary of the Interior, through the Bureau of Reclamation.[2] The

[1] Much of the history of the Reservation is covered in the Court's opinions in *Shoshone Tribe* v. *United States*, 299 U.S. 476 and *United States* v. *Shoshone Tribe*, 304 U.S. 111.

[2] Under the law, the authority of the Bureau of Reclamation is limited to surface rights (Act of May 20, 1920, c. 192, 41 Stat. 605, 606 (43 U.S.C. 375); Act of May 16, 1930, c. 292, sec. 4, 46 Stat. 367 (43 U.S.C. 424(e)); and Act of March 31, 1950, c. 78, 64 Stat. 39 (43 U.S.C. 375d); see 43 CFR 402.10).

oil and gas was administered by the Secretary through the Bureau of Indian Affairs under the Act of August 21, 1916, c. 363, 39 Stat. 519. That Act and its implementing regulations required that the oil and gas be offered for lease by competitive sale to the one bidding the highest bonus (25 CFR 192.4).

To obtain control of the surface, the Bureau of Reclamation initiated steps to acquire the Tribes' equitable title in the surface of the 161,520 acres, and incidentally to settle tribal claims against the United States arising out of the Government's unauthorized use of the land for the establishment of right-of-ways and similar purposes. Negotiations continued over a period of at least a year. It was understood from the beginning and throughout the negotiations that the Tribes were selling and the United States was buying the *surface* only. An appraisement of the surface was made and the average per-acre price of $6.25 was agreed upon as "the value of the land for agricultural and grazing purpose" (H. Rept. No. 269, 83d Cong., 1st sess. (1953), pp. 2, 3). On this basis, the consideration of $1,009,500 was reached (161,520 acres × $6.25=$1,009,500). The transaction was expressed in the Act of August 15, 1953, c. 509, 67 Stat. 592, discussed at pp. 9-12, *infra*, providing for payment of the consideration.

Promptly following the Act of 1953, public land applicants filed for oil and gas leases on the entire 161,520 acres under the Mineral Leasing Act of 1920, governing public mineral deposits "owned by the United States" (30 U. S. C. 181) (J. A. 5). Under the public land laws, oil and gas lands of the character of the 161,520 acres go to the first-qualified applicant for a nominal rental—no bonuses (30 U. S. C. 226). However, Indian oil and gas deposits, such as underlay the 161,520 acres, must be leased at competitive sale to the bidder paying the highest bonus (Act of August

21, 1916, c. 363, 39 Stat. 519; see 25 U. S. C. 398, 396b). The Secretary, without notice to or consultation of any kind with the Tribes, issued over 93 public land leases covering the oil and gas deposits underlying practically every one of the 161,520 acres. No competitive sales were held and no bonuses collected as in the case of Indian oil and gas deposits (J.A. 5-6). The leases were for all practical purposes given away for a nominal rental averaging 20 cents per acre per year for the first five years (30 U. S. C. 226).

The Secretary knew the land was extremely valuable for oil and gas at the time he negotiated the purchase of the surface from the Tribes and when he issued the 93 public land oil and gas leases. There were producing wells on the land (I-96-Ind. 4757 and 7775) and producing oil and gas fields substantially surrounded the land on all sides. During the period from March 29, 1949, to March 30, 1953, while the Secretary was negotiating the purchase from the Tribes, he offered 4,400 acres of the 161,520 acres in suit for competitive lease under laws governing Indian lands and those 4,400 acres brought $664,171 in bonuses—an average of $150.95 per acre. Of this, $494,167 came in the month of March 1953, just about four and a half months before the Act of August 15, 1953 (J. A. 5, 9).[3] Those

[3]

	Lease Number	Acres	Bonus	Bonus per acre	Lease Date
1.	I-96-Ind-77-38	160	$ 3,600	$ 22.50	March 29, 1949
2.	I-97-Ind-77-39	120	1,500	12.50	March 29, 1949
3.	I-96-Ind-78-32	160	1,240	7.75	September 11, 1951
4.	I-96-Ind-78-31	120	3,660	30.50	September 11, 1951
5.	14-20-258-42	980	160,004	163.27	December 31, 1952
6.	14-20-258-48	370	30,626	82.77	March 30, 1953
7.	14-20-258-49	1860	430,199	231.29	March 30, 1953
8.	14-20-258-50	40	3,066	76.65	March 30, 1953
9.	14-20-258-52	590	30,276	51.31	March 30, 1953
	Total:	4400	$664,171		

Average bonus $150.95 per acre

The figures shown above have been verified by the lease records. They vary slightly from those recited in counsel's letter of March 23, 1955, to Secretary McKay, J. A. 9. Of course, the full lease data are part of the administrative record which is not before the Court since this case was initially decided on a motion to dismiss.

bonuses were for the right to lease the land at a royalty of 12½% and an annual rental of $1.25 per acre, plus other benefits to the Tribes (25 CFR 192.17-192.18). The bonuses accrued to the Tribes regardless of whether oil or gas was found.

Promptly after the Tribes learned of the Secretary's issuance of public land leases without competitive sale, administrative proceedings were instituted protesting the leasing of the oil and gas deposits in the 161,520 acres under the Mineral Leasing Act of 1920 as if those deposits were public property "owned by the United States" (J. A. 6-7).

The protest was denied. In his decision, the Secretary held that the "trusteeship of the United States with regard to these minerals, and the prior beneficial ownership of the Tribes, was effectively terminated" by the Act of 1953 (App., *post*, p. 25).

Petitioners sought judicial review. The Secretary chose not to answer the complaint and produce the full administrative record but moved to dismiss on the grounds that the complaint failed to state a cause of action and that the outstanding lessees were indispensable parties. The district court filed a memorandum opinion in which it took the position that the Act of 1953 placed the lands "within the public domain." At the same time, the district court seemed to recognize that the 90% interest in the proceeds constituted a "beneficial interest outstanding in the Indians" (App., *post*, p. 19). The district court entered a judgment of dismissal (J. A. 19). The court of appeals affirmed (App., *post*, pp. 16-18).

Reasons for Granting the Writ

I

The case presents an important question of federal law which should be settled by this Court.

This is not an ordinary review of administrative action. Here, the Secretary sits in a dual capacity. He represents the United States as guardian and as trustee of the property of its Indian wards. He also represents the United States as proprietor of its public lands and minerals, subject to the pressures of those seeking the federal bounty under public land laws. Notwithstanding that the Secretary stood in the position of a fiduciary to the Tribes, which acted under his control and with his advice, he simultaneously represented them as sellers and the United States as buyer. He negotiated the sale and paid the wards for surface only. Then he seized upon the language of conveyance in the statute authorizing compensation for the agreed value of the surface, to strip the Tribes of the overwhelming value of their beneficial ownership in the oil and gas.

The Secretary removed the protection of competitive leasing applicable to all other Indian lands and made leases available to the oil industry substantially for free under the public land laws. He breached the long-established public policy expressed in statutes requiring that all restricted Indian oil and gas deposits be offered for lease to the bidder paying the highest bonus.[4] These petitioner Tribes and this land were made the sole exception to that policy. No other restricted Indian oil and gas in the United States may be leased without competitive bidding.

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[4] Act of May 29, 1924, c. 210, 43 Stat. 244 (25 U.S.C. 398); Act of May 11, 1938, c. 198, 52 Stat. 347 (25 U.S.C. 396b); see 25 CFR 187.7, requiring competitive bids.

The action of the Secretary is without precedent in the annals of Interior's stewardship over Indian affairs. It raises a compelling issue of public morality.[5]

The court of appeals affirmed this result. The correctness and wisdom of that decision raise an important question of federal law which has not been but should be settled by this Court.

II

The decision of the court below is in conflict with the applicable decisions of this Court and the policy of the United States with respect to Indian oil and gas lands.

A. *It is possible to establish a conflict of decisions in the circumstances of this case.* This case cannot be waved away as presenting merely the interpretation of an isolated statute applicable to the collective rights of only a few thousand Indians on a single reservation and as being of no great public importance because of its non-recurring character. This is so since the 1953 Act under consideration follows a familiar pattern repeatedly utilized by Congress in connection with Indian lands. Under that pattern, all the right, title and interest of the Indians is acquired by the United States but the Indians are given the net proceeds of the lands disposed of—thereby giving rise to a beneficial title in the Indians. And, as we show below,

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[5] See the article in the *Washington Post and Times Herald* of January 9, 1956, by Warren Unna, entitled "The Giveaway Charges. Selling of Indians' Wealth by Government is Alleged." Under the subheading "Interior 'Interpreted'", the action of the Department with respect to oil and gas leasing on the 161,520 acres in suit is discussed (reprinted in 102 Cong. Rec., 3336 (1956)). And see the answer made on behalf of Secretary McKay by Senator Goldwater (102 Cong. Rec., 3698 (1956)). The answer is wholly silent on the point that this was Indian land and underscores the arbitrary injustice of the Secretary's action.

of the many cases considering this very pattern, this is the first ever to hold against the beneficial title of the Indians. Adherence by Congress to the established legal formula has created a general federal policy which precludes treating the issues here presented as unique.

B. *Established pattern of Indian legislation and conflict of decisions.* The Act of 1953 (App., *post*, pp. 34-37), construed below, precisely fits the familiar legislative scheme.[6] Section 1 speaks of making compensation, "except as provided in section 5 of this Act, for terminating and extinguishing *all of the right, title, estate, and interest*, including minerals, gas and oil, of said Indian tribes * * *."[7] This language of absolute extinguishment of the Indian interest is then countered by a provision in section 5 under which the Tribes are recognized to have the right to receive the net proceeds of mineral income from the land.[8] The court below held (App., *post*, p. 18) that the 1953 Act showed,

[6] In 1935 the Secretary of the Interior listed 33 cessions covered in 25 separate statutes which had utilized the pattern of the 1953 legislation here involved. *Restoration of Lands Formerly Indian to Tribal Ownership*, 54 I.D. 559 (1934). In each instance, the language of conveyance from the tribe was all-inclusive, just as it is in section 1 of the 1953 Act. In terms, every interest was conveyed. Yet, in each instance, the tribe was held to be the beneficial owner because it had the right to the proceeds.

[7] Emphasis supplied throughout this petition unless otherwise indicated.

[8] Section 5 speaks of the Tribes receiving 90% of the gross receipts from the mineral income from the land. The 10% deduction was to be retained by the Government for management services (S. Rept. No. 644, 83d Cong., 1st sess. (1953), p. 9). It was merely a convenient method of arriving at *net* proceeds, thereby saving accounting for the precise costs of administration. See *Squire* v. *Capoeman*, 351 U.S. 1, 4, n. 7.

Section 2 of the 1953 Act restores all "unentered and vacant lands within the area" ceded, to the public domain but the legislative history makes plain that this section was limited to surface rights—i.e., lands "for which compensation to the Indian Tribes is made in section 1" (H. Rept. No. 269, 83d Cong., 1st sess. (1953), p. 4; S. Rept. No. 644, 83d Cong., 1st sess. (1953), p. 10). That compensation of $1,009,500 was for surface only.

in its legislative history, that "Congress intended to extinguish all rights and interests of the tribes in these lands, not excepting oil and gas rights."

But until the decision below, words of absolute extinguishment of the title of an Indian tribe, no matter how strong, had never been taken as vitiating a tribe's beneficial title arising out of its right to the net proceeds from the land. Without a single exception, every tribe involved in the "cession in trust" legislative pattern has always been held to be the beneficial owner of the land itself. The decision below conflicts with these cases.

Thus, in *Minnesota* v. *Hitchcock*, 185 U.S. 373, the Chippewas remained the beneficial owners even though the statute provided "for the complete cession and relinquishment in writing of *all their title and interest*" and specified that "acceptance and approval of such cession and relinquishment * * * shall operate as a *complete extinguishment of the Indian title* without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided." The test of beneficial ownership is whether the Indians are entitled to the proceeds. In the words of this Court: "The cession was not to the United States absolutely, but in trust" (185 U.S. at pp. 394-5).

In *United States* v. *Mille Lac Chippewas*, 229 U.S. 498, the Court upheld the right of the Mille Lac Band to recover from the United States for damages caused by selling their lands under the public land laws rather than by public sale as prescribed by the statutory agreement—the same one involved in *Minnesota* v. *Hitchcock*, above. This Court noted that the Secretary's disposition of the lands under the general land laws instead of the law governing the sale of the Chippewas' land was "not for the benefit of the Indians, but in disregard of their rights. This was clearly in violation of the trust before described,

and the Indians are entitled to recover for the resulting loss" (229 U.S. at p. 509).

In *United States* v. *Brindle*, 110 U.S. 688, 690, 693, the treaty provided that the Indians "cede, relinquish and quitclaim to the United States *all their right, title and interest* in and to their country" but also in a later article provided that "the United States agree to pay to said Tribe all the moneys received from the sale of the lands • • • after deducting therefrom the cost of surveying, managing, and selling the same." It was held that under this treaty "in equity • • • the Indians continued, until sales were made, the beneficial owners of all their country ceded in trust. Of this we have no doubt" (110 U.S. at p. 693).

In *Ash Sheep Co.* v. *United States*, 252 U.S. 159, 164-166, the act read that the Indians "cede, grant, and relinquish to the United States *all right, title, and interest.*" The lands were to be sold and the proceeds paid to the Indians. This Court held that the ordinary public land laws did not apply since the statute established a relationship of trustee and beneficiary between the Government and the Indians and, "while the Indians by the agreement released their possessory right to the government, • • • so that, as their trustee, it could make perfect title to purchasers, nevertheless, until sales should be made, any benefits which might be derived from the use of the lands would belong to the beneficiaries, and not to the trustee, and that they did not become 'public lands' in the sense of being subject to sale or other disposition, under the General Land Law" (p. 166).

In *Confederated Bands of Ute Indians* v. *United States*, 100 Ct.Cls. 413 (1943), the statute provided that the ceded lands "*shall be held and deemed to be public lands of the United States* and subject to disposal under the laws pro-

vided for the disposal of the public lands, * * *" with the net proceeds of the sale to be deposited to the credit of the Indians. The Government contended that, by this language, "the Indians conveyed their lands for some cash and some promises, and that made them legal strangers to the land" (p. 426). The Court of Claims rejected this argument, holding that the Indians retained beneficial title for which they were entitled to compensation. The views of the Court of Claims were reaffirmed in its later decision in the same case (112 C.Cls. 123, 130).[9]

In *Hanson* v. *United States*, 153 F. 2d 162 (C.A. 10, 1946), the statute provided that surplus lands were to be restored to the public domain and that the proceeds of the sale, after reimbursing the United States for its costs, should be paid to the Indians. The court of appeals, on authority of *Ash Sheep Co.* v. *United States*, 252 U.S. 159, held (p. 163) " * * * it clear that, while the legal title passed to the United States and the lands were subject to entry and sale, the beneficial title remained in the Indians and the United States held the land as trustee for the Indians."

These cases, each with a cession as absolute as the one here, each with a reservation of net proceeds to the ~~title~~ transferring title, established a pattern termed "cession in trust" in Indian law (Cohen, Felix S., *Handbook of Federal Indian Law* (1945), pp. 334-335). The 1953 legislation fits this pattern exactly.

C. The conflict is on the controlling point of the case. Under the foregoing, it is impossible to hold that in some manner the Tribes retain the beneficial interest in the oil and gas and at the same time hold that the deposits were

[9] Earlier, the Solicitor of the Department of the Interior had construed the same Ute cession and held that: "Regardless of the particular language of the cession", the Utes remained the beneficial owners since they were entitled to the proceeds. *Restoration to Tribal Ownership of Ceded Colorado Ute Indian Land*, 56 I.D. 330, 337-338 (1938).

"owned by the United States" and could lawfully be leased under the Mineral Leasing Act of 1920. In the first place, the Mineral Leasing Act of 1920 is limited in its application to deposits "owned by the United States." *Justheim* v. *McKay*, 123 F. Supp. 560 (D.C. 1954), affirmed 97 U.S. App. D.C. 146, 229 F. 2d 29 (1956). In the second place, the Act of August 21, 1916, c. 363, 39 Stat. 519 (App., *post*, pp. 33-34), as implemented by the regulations (25 CFR Part 192), specifies how oil and gas leases are to be issued for these very ceded lands.

Under the Mineral Leasing Act of 1920, the policy of stimulating oil exploration on public lands admits a considerable element of giveaway of the values in oil deposits on federal lands. But the national policy with respect to Indian oil and gas, where the United States is trustee, is not to accept some nominal rental from the first person asking for a lease but to advertise the lease sale to invite bidders interested in the lands and to take the highest bonus which can be secured. That is true not only under the special 1916 Act relating to these deposits but under the general laws applicable to Indian-owned deposits other than those here involved (25 U.S.C. 396b, 398).

There is a long-established administrative interpretation which clearly says that, if the deposits are beneficially owned by the Indians under the doctrine of the cases in this Court, which we reviewed just above, then the deposits are not "owned by the United States" within the meaning of the Mineral Leasing Act of 1920. The leading ruling was made in 1950 with respect to the interest of these Tribes in some of the very lands in suit. There, the Secretary explained "that the phrase 'lands * * * owned by the United States', as used in the Mineral Leasing Act, is at least limited to lands *in which all rights are held by the United States, including the unrestricted right to use or*

dispose of any proceeds derived from such lands." He refused to grant public land oil and gas leases. *Florence E. Gallivan*, 60 I.D. 417, 419 (1950). The Department of the Interior has consistently followed the *Gallivan* case and held that, so long as the Indians own the proceeds, the oil and gas deposits are not "owned by the United States" and must be offered for competitive lease in accordance with the law and policy governing Indian land.[10]

It follows that the result reached by the court below that the oil and gas deposits are beneficially owned by the United States, even though the Tribes are entitled to the net proceeds, is in conflict with all other cases and reverses the established policy of the Government with respect to Indian oil and gas land.

[10] Except for the instant case, the rule in the *Gallivan* case has been consistently followed by the Department both before and after the Secretary's decision under review. *Charles B. Gonzales*, A-26551 (January 23, 1953); *Edward M. Brown*, A-26523 (December 11, 1952) (Gowers, SO-1953-9); *W. B. Minturn, et al.*, BLM Montana 012925, etc. (February 7, 1956) (Gowers, BLM-1956-38); *Grace F. Holbeck*, BLM Montana 014222 (March 20, 1956) (Gowers, BLM-1956-52); *Cynthia True*, BLM Montana 019683 (November 16, 1956) (Gowers, BLM-1957-5); *Arthur F. C. Hoffman*, Colorado 014790 (July 26, 1957) (Gowers, BLM-1957-104); *John Snyder*, Montana 019429 (August 7, 1957) (Gowers, BLM-1957-112); *B. Leslie Zaerr*, Montana 014651 (September 3, 1957) (Gowers, BLM-1957-126).

Conclusion

This case not only presents a conflict of decisions calling for supervision by this Court but it challenges the standards of justice, morality and fair play which bind the Secretary of the Interior in his dealings with Indian wards.

The writ should be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13634

UNITED STATES EX REL THE SHOSHONE INDIAN TRIBE AND THE ARAPAHOE INDIAN TRIBE OF THE WIND RIVER RESERVATION IN WYOMING, ET AL., APPELLANTS

v.

FRED A. SEATON, SECRETARY OF THE INTERIOR, APPELLEE

Appeal from the United States District Court for the District of Columbia

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Decided September 5, 1957

Mr. Marvin J. Sonosky, with whom *Messrs. Glen A. Wilkinson* and *Donald C. Gormley* were on the brief, for appellants.

Mr. Roger P. Marquis, Attorney, Department of Justice, for appellee. *Mr. S. Billingsley Hill*, Attorney, Department of Justice, also entered an appearance for appellee.

Before EDGERTON, *Chief Judge*, and DANAHER and BASTIAN, *Circuit Judges*.

PER CURIAM: Two Indian tribes and their representatives contest the Secretary of the Interior's leasing of lands in which the tribes claim an interest. They appeal from a judgment dismissing their complaint.

An Act of Congress of August 15, 1953, 67 Stat. 592, provides in Section 1 for payment by the United States, to

the two tribes, of $1,009,500 as "full, complete, and final compensation, except as provided in section 5 of this Act, for terminating and extinguishing all of the right, title, estate, and interest, including minerals, gas and oil, of said Indian tribes and their members of, in and to the lands, interests in lands, and any and all past and future damages arising out of the cession to the United States, pursuant to the Act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Indian Reservation lying within" described boundaries. Section 5 of the 1953 Act provides: "Notwithstanding any other provision of law, the United States shall deposit in the Treasury of the United States to the credit of said tribes . . . 90 per centum of the gross receipts of the United States, as they are received from time to time, from all leases, bonuses, royalties, or other proceeds derived under the mining and mineral-leasing laws of the United States from any and all lands in which all rights and interests of the tribes are terminated and extinguished by the terms and conditions of section 1 of this Act and which are embraced within the boundaries of the tract described in said section 1." 67 Stat. 613.

An Act of 1920, 41 Stat. 437, 441, as amended, 30 U.S.C. § 181, authorized the Secretary of the Interior to make mineral leases, including oil and gas leases, of lands owned by the United States. Pursuant to the 1920 Act as amended, the Secretary now makes oil and gas leases within the boundaries described in the 1953 Act. In the present suit, the tribes ask to have such leasing enjoined and such leases cancelled. They say that "so long as they retain the right to 90% of the proceeds from the mineral deposits, they remain the beneficial owners of the minerals, and that such mineral deposits, beneficially owned by the Tribes, may not be leased under the Mineral Leasing Act of 1920 . . . , which is limited to public lands 'owned by the United States' but may be leased only by competitive bid in accordance with the special 1916 statute governing these particular lands or the general statutes governing Indian lands"; referring to Acts of 1916, 39 Stat. 519; 1924, 43 Stat. 244, 25 U.S.C. § 398; and 1938, 52 Stat. 347, 25 U.S.C. § 396b.

The District Court dismissed the complaint, on the ground that the 1953 Act made the lands in question part of the public domain and no longer subject to statutes regulating leases of Indian lands. We agree. Both the 1953 Act and its legislative history plainly show that Congress intended to extinguish all rights and interests of the tribes in these lands, not excepting oil and gas rights. The Report of the Senate Committee on Interior and Insular Affairs, recommending passage of the bill, contains a letter from the Assistant Secretary of the Interior in which he says: "It is our understanding that the bill would extinguish the tribes' interests in and to all of the oil, gas, and other mineral resources, as well as the surface resources, of the remaining, undisposed ceded lands within the boundaries of the Riverton project, as they would be defined by the bill. It appears to be the intent of the bill that, in lieu of such oil, gas, and other mineral resources, the tribes shall be paid 90 percent of the royalties, bonuses, and rentals received by the United States for the oil, gas, and other minerals in these lands. . . ." S. Rep. No. 644, 83d Cong., 1st Sess. (1953) 9. The corresponding House Report, No. 269, 83d Cong., 1st Sess. (1953), is substantially similar in this respect. Though statutes terminating Indian property rights should be construed narrowly, we cannot ignore the intention of Congress where it is perfectly plain.

Affirmed.

MEMORANDUM OPINION OF THE DISTRICT COURT

Motion to dismiss by defendant granted.

By the Act of August 15, 1953, 67 Stat. 592, the lands in question became part of the public domain, subject for administration, use, occupancy and disposal under the reclamation and public land laws of the United States.

Since it appears that these lands are not within a presently known geologic structure, obviously the only appraisal which could be made was that of their surface use value. Congress, by the Act, provided that even though the Indians had parted under the terms of the statute with *all*

of their right, title, estate and interest including minerals, gas and oil, etc., nevertheless ". . . 90 per centum of the gross receipts of the United States, as they are received from time to time, from all leases, bonuses, royalties, or other proceeds derived under the mining and mineral leasing laws of the United States from any and all lands in which all rights and interests of the tribes are terminated and extinguished . . ." are to be deposited in the Treasury to the credit of the tribes.

As noted above, Congress by legislation has placed the lands within the public domain. That being the fact, the special leasing Act of August 21, 1916 no longer applies. The only beneficial interest outstanding in the Indians, if indeed it can be called such, is that delineated by the statute, namely, that of an interest in 90 per cent of the receipts received from time to time, from leases, bonuses, royalties or other proceeds.

True, it is the rule that in construing statutes relating to Indians, a liberal construction in their favor is to be indulged in, but this rule of construction cannot be invoked for the purpose of overcoming the plain meaning of plain words used in such legislative enactments, and Courts have no power to remake or redraft them. *United States* v. *First National Bank*, 234 U.S. 245, at 260.

Order accordingly.

(S.) MATTHEW F. MCGUIRE,
United States District Judge.

June 21, 1956.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington 25, D. C.

September 22, 1955

THE SHOSHONE TRIBE OF INDIANS and the ARAPAHOE TRIBE OF INDIANS OF THE WIND RIVER RESERVATION, Wyoming, ROBERT N. HARRIS, a member of the Shoshone Tribe and NELLIE SCOTT, a member of the Arapahoe Tribe, PROTESTANTS

v.

JULIAN H. ZIMMERMAN, *et al.*

Wyoming 024038, *et al.*

Request for assumption of jurisdiction by the Secretary. Protest against issuance of oil and gas leases dismissed.

Jurisdiction Assumed by the Secretary
Protest Dismissed

On May 5, 1955, counsel for the above Indian Tribes filed a protest with the Director, Bureau of Land Management, against action theretofore taken in the Bureau in issuing certain oil and gas leases under the provisions of the Mineral Leasing Act of February 25, 1920, (41 Stat. 437, as amended; 30 U. S. C., secs. 181, *et seq.*) for certain lands within that portion of the Wind River Indian Reservation, Tremont County, Wyoming, described in section 1 of the act of August 15, 1953 (67 Stat. 592; Public Law 284, 83rd Cong., 1st Sess.). Copies of the protest were served on the 48 lessees named in the protest and their answers thereto have been made a part of the record.

On June 9, 1955, counsel for the tribes filed a request that the Secretary of the Interior assume immediate jurisdiction over the protest on the grounds that only legal questions are involved which would require the ultimate decision of the Secretary. All lessees were notified of this request on June 17 and were allowed 15 days in which to file

objections. No such objections have been received. The request is hereby granted for the reason that the protest involves certain fiscal and other rights of the Indian Tribes under the act of August 15, 1953, *supra*, and particularly in view of this Department's special duty in matters involving the welfare of those tribes. That the Secretary has authority to assume jurisdiction over any matter pending in the Department at any stage of the proceedings has been long established. *George C. Tournas*, 56 I.D. 390; *The Texas Company, et ano.*, A-27021 (August 10, 1954).

It is the position of the protestants that the lands described in section 1 of the 1953 act should have been leased by the Department under the provisions of the act of August 21, 1916, 39 Stat. 519, rather than under the general leasing laws, and for this reason the protested leases are void and should be canceled as having been issued contrary to law. The protestants request that the following action be taken:

> (a) That all leases covering lands within the 161,500-acre area described in Public Law 284, which were issued under the provisions of the Mineral Leasing Act of 1920 be canceled;
>
> (b) That all pending applications for lands within the area described, which seek leases under the 1920 act, be rejected;
>
> (c) That all lands within the area described in Public Law 284 be administered in accordance with the act of 1916 and the regulations under that act. (25 CFR, Part 192).

As grounds for their protest, the protestants have made general reference to the Treaty of July 3, 1868, 15 Stat. 673; the agreement of April 21, 1904, ratified March 3, 1905, 33 Stat. 1016; the special leasing act of August 21, 1916, *supra*, and the decision of the Department in *Florence E. Gallivan, et al.*, 60 I.D. 417 (1950). Protestants also contend that under the provisions of Public Law 284, approved August 15, 1953, 67 Stat. 592, the tribes retained beneficial ownership of the minerals in the lands described in the act, and that the 1916 leasing act is therefore the exclusive authority for the leasing of those mineral interests.

Section 1 of Public Law 284 directs that certain funds be credited to the Shoshone and Arapahoe Tribes, and that such funds "shall be deemed to constitute full, complete, and final compensation, except as provided in section 5 of this Act, *for terminating and extinguishing all of the right, title, estate, and interest, including minerals, gas and oil, of said Indian tribes and their members of, in and to the lands, interests in lands*, and any and all past and future damages arising out of the cession to the United States, pursuant to the act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Reservation lying within the following described boundaries: • • •". (Emphasis supplied). The lands affected by the act are then described by metes and bounds.

Section 2 of Public Law 284 provides as follows:

> "Sec. 2. Subject only to the existing rights and interests which are not extinguished or terminated by this Act, all unentered and vacant lands within the area described in section 1 hereof, are hereby restored to the public domain for administration, use, occupancy, and disposal under the reclamation *and public land laws of the United States*: • • •". (Emphasis supplied).

Reference is also made to section 5 of the act providing that:

> "Sec. 5. Notwithstanding any other provision of law, the United States shall deposit in the Treasury of the United States to the credit of said tribes, • • • 90 per centum of the gross receipts of the United States, as they are received from time to time, from all leases, bonuses, royalties, or other proceeds *derived under the mining and mineral-leasing laws of the United States from any and all lands in which all rights and interests of the tribes are terminated and extinguished by the terms and conditions of section 1 of this Act* and which are embraced within the boundaries of the tract described in said section 1. • • •". (Emphasis supplied).

The principal question for our consideration raised by the protest is whether the tribes retained beneficial owner-

ship of the minerals in question such as would require that they be leased exclusively under the provisions of the special leasing act of August 21, 1916, *supra*. It is the position of the protestants that a trusteeship by the United States on behalf of the tribes existed prior to the passage of Public Law 284; that enactment of that legislation did not alter that relationship, and that the tribes have continued to be the beneficial owners of the minerals in question.

Protestants' references to the various treaties, acts and the decision of the Department in the *Gallivan* case, go only to establish a fact which has not been denied, i.e., that prior to the enactment of Public Law 284, the United States was in the position of a trustee of these lands and the minerals therein for the benefit of the tribes. This prior trusteeship is readily apparent from the language of the act of March 3, 1905 (33 Stat. 1016) by which Congress ratified an agreement which ceded the Wind River Reservation lands to the United States. In the 1905 Act Congress amended Article IX of the agreement of April 21, 1904, to expressly provide that it was the understanding of the parties "that the United States shall act as trustee for said Indians to dispose of said lands and to expend for said Indians and pay over to them the proceeds from the sale thereof as received, as herein provided." (33 Stat. 1016, 1021).

With the act of August 16, 1916, *supra*, the Congress provided special leasing authority for the issuance of oil and gas leases on lands within the ceded portion of the Wind River Reservation. Under the provisions of that legislation, the trusteeship of the United States was amended with regard to the leasing of these lands and the disposition of the proceeds therefrom. Therefore, in its administration of the 1916 Act, the Government was merely continuing its trusteeship of the Wind River lands. In view of this specific legislation, the Department held in the *Gallivan* case referred to by the protestant that the 1916 Act provided the exclusive authority for the issuance of oil and gas leases on these ceded lands and that the Mineral Leasing Act of 1920, *supra*, was not applicable thereto.

We turn then to Public Law 284 for a determination of the question of whether under its provisions this original

trusteeship of the United States was to be continued. After a careful examination of this legislation we are of the opinion that the trusteeship of the United States with regard to these minerals, and the prior beneficial ownership of the tribes, was effectively terminated thereby. It is our further opinion that the provisions of Public Law 284 clearly and expressly justify the following conclusions:

(1) That section 1 thereof constitutes a full relinquishment and termination of all right, title, estate and interest in the lands described therein, including the surface and mineral rights;

(2) That by section 2 thereof, all the lands were restored to the public domain for disposal under the reclamation and public land laws, the latter including the general mining and mineral leasing laws of the United States, as fully confirmed, if that were needed, by the language in section 5 providing for disposition of the proceeds of such disposals;

(3) That if, under the Act, the United States is trustee for the Indians in any respect, it is only as a depository of the funds received under section 5 of the act, and that such trusteeship extends only to those *funds* rather than to the lands or minerals themselves; and, further, that the phrase "notwithstanding any other provisions of law" at the beginning of said section 5 necessarily precludes disposition of the funds under the act of August 21, 1916, *supra*, section 35 of the Mineral Leasing Act of 1920, as amended (30 U.S.C., sec. 191), the Reclamation Laws, or any other law.

The above conclusions are supported by the generally accepted rule of statutory construction that "when [legislative] language is clear and unambiguous it must be held to mean what it plainly expresses". *Sutherland Statutory Construction*, sec. 4702. There is nothing in the termination and extinguishment provisions of section 1 of the Act which could be said to be ambiguous. On the contrary, those provisions of that section must be said to express clearly that which Congress intended to do i.e., to terminate and extinguish all the right, title, and interest which the tribes

theretofore had in the lands and minerals described therein.

While we are of the opinion that the clear and unambiguous language of Public Law 284 precludes the use of extraneous sources, including the Congressional reports, for interpretation purposes (*Caminetti* v. *United States*, 242 U.S. 470, 490), even if the legislative history of the Act were resorted to, these conclusions would find full support. In this regard it is noted that the reports of this Department on the legislation at page 3 of House Committee Report No. 269 (83rd Cong., 1st Sess.) and at page 9 of Senate Committee Report No. 644 (83rd Cong., 1st Sess.), include the following statement:

> "It is our understanding that the bill is to extinguish the Tribes' interests in and to all the undisposed of, ceded lands within the boundaries of the Riverton Project, *including the minerals and oil and gas*, but that *in lieu thereof* the Tribes shall receive 90 per centum of the royalties, bonuses, or rentals received by the United States for such minerals or oil and gas". (Emphasis supplied).

It seems apparent from this portion of these reports that it was the position of this Department, adopted by the Committees of both the House and Senate, that the entire interests of the tribes in these minerals would be extinguished by the legislation subject only to the payment of the receipts therefrom as directed by the Congress.

In these reports to the Committees it was also recommended by the Department that section 5 of the original bills be amended to include the phrase (in connection with the disposition of the proceeds from the minerals) "in which all rights and interests of the tribes are terminated and extinguished by the terms and conditions of section 1 of this Act * * *". This suggested amendment was later adopted by the Congress and appears in section 5 of the Act as enacted, which fact is clearly indicative of the intent of Congress that the provisions of said section 5 were not to be construed as having the effect of retaining in the tribes any right or interest in these minerals. On the contrary, adoption of this amendment to section 5 indicates that Congress intended to make it clear that full title to the

minerals was to pass to the United States, subject only to their directive regarding the disposition of the receipts therefrom.

It is also noted that this interpretation of the Act was brought to the attention of the Subcommittee on Indian Affairs of the Senate during hearings on the legislation. Thus, at page 11 of the Report of Proceedings before the Senate Subcommittee on Indian Affairs considering H. R. 3476, 83rd Cong., 1st Sess. (later superseded by H. R. 4483, 83rd Cong., 1st Sess.), there appears the following testimony by Mr. Samuel Flickinger, then Assistant Chief Counsel, Bureau of Indian Affairs:

> "Mr. Flickinger. • • •
>
> "Now under this Act it is provided that all the right, title and interest of the Indians will be disposed of to the United States. *That will include the oil interests and all other interests.*
>
> "We are suggesting an amendment to section 1 of the Act which will protect the interests of the Indians with respect to their rights in the oil, *not by retaining the interest of the Indians in the oil and gas*, but by paying to the Indians, the United States paying to the Indians a royalty of 90 percent of the income received from such development.
>
> "Now the reason for this is that the Indians through the Indian Office desire to step out insofar as this particular area is concerned to have nothing further to do with the operations. • • •
>
> "The Indians, both tribes, in cooperation and activity of their attorneys have agreed to the measure." (Emphasis supplied).

Again at pages 32 and 33 of this Report of Proceedings on the legislation before the Senate Subcommittee, Mr. Flickinger testified as follows:

> "Mr. Flickinger: • • •
>
> "At the present time the Indians have leases in the ceded area covering oil and gas and the royalties are paid to the United States for and on behalf of the Indians. The bill provides that all right, title, and in-

terest in and to the lands and the minerals will vest in the United States. The Indian's interest will cease to exist.

"*The title, however, both legal title—which, of course is now in the United States—and equitable title, would vest in the United States.* The Indians would step out entirely from this area of 171,000 acres." (Emphasis supplied).

Though it is apparent that the tribes were represented at these hearings by their attorneys, we do not find that any attempt was made to object to or correct the interpretation of the legislation given in the above-quoted testimony before the Subcommittee.

From our examination of the legislative history of Public Law 284, including the debates on the floor of both the House and Senate, we fail to find any statement or reference which would indicate that only the surface rights to the lands were to be extinguished, with a reservation of the beneficial ownership of the minerals to the tribes as contended by the protestants. The bills as reported to the Congress and considered on the floor of the House and Senate must therefore be presumed to have the effect which the language of the Act clearly indicates.

With our conclusion that by section 1 of the Act the prior beneficial ownership by the tribes of these lands and minerals was terminated, it necessarily follows that the special leasing authority included in the act of August 16, 1916, *supra*, is clearly inapplicable. The leasing authority of the 1916 Act is applicable only to the undisposed-of ceded lands of the Wind River Reservation in which the tribes retain an interest as beneficial owners. *Florence E. Gallivan, supra.* Since it is our conclusion that such beneficial ownership has, in this case, terminated with enactment of Public Law 284, it is necessary that the Department have other authority for its administration of the minerals in question. This authority is found in section 2 of Public Law 284 providing that the lands described therein "are hereby restored to the public domain for administration, use, occupancy and disposal under the reclamation and public land laws of the United States". Clearly under this lan-

guage the lands became public lands of the United States subject to administration under the public land laws. As one of the public land laws, the Mineral Leasing Act of 1920 is the exclusive authority under which leasable minerals in public lands owned by the United States may be disposed of. (30 U. S. C., secs. 181 and 193). It follows, then, that the leasing of the minerals in these lands under the provisions of the Mineral Leasing Act of 1920 was proper, and that that Act provided the only authority of law by which such mineral leasing could properly be accomplished.

This position is fully confirmed by the express provision of section 5 of the Act providing for the disposition of the receipts "or other proceeds derived *under the mining and mineral-leasing laws of the United States* from any and all lands in which all rights and interests of the tribes are terminated by the terms and conditions of section 1 of this Act * * *". (Emphasis supplied). In addition, this language in terms refutes the protestants' contention that said section 5 "constitutes a continuing recognition of the Indians' beneficial ownership of the minerals". From this section it is apparent that the lands were to become subject to the general mining and leasing laws of the United States in the same manner as other public lands, subject only to the special provision for the disposition of the receipts.

As used in section 5 of the Act, the terms "mining and mineral leasing laws of the United States" obviously have reference to the general public land and mineral laws of the United States rather than to any special leasing law such as the 1916 Act, referred to above. These terms as used in the single phrase are *in pari materia* and must be construed together. If it could be said that the Indians retained beneficial ownership of the minerals in these lands, they would not be subject to location, entry, and patent under the mining laws, and no effect could be given to that portion of the Act. (43 U. S. C., sec. 22). Congress cannot be presumed to have intended that its express reference to the mining laws was to be meaningless. Therefore, the reference to the mining laws must be said to have been to the *general* public land mining laws of the United States. In *Oklahoma* v. *Texas*, 258 U.S. 574 the Supreme Court

held that the mining laws are a part of the body of public land laws which have never been held to extend to other than public lands *belonging to the United States*, at least in the absence of explicit and express language so extending them to other lands.

It follows, then, that if the phrase "mining and mineral leasing laws of the United States" is to be construed as a whole, the reference to the mineral leasing laws must also be held to refer to the general leasing laws. If Congress had intended that a special [Indian land] leasing act applicable only to those particular lands was to apply, it can reasonably be said that express reference to such a special act would have been made. Concerning Indian reservations, Indian lands, and Indian affairs generally, Congress habitually acts only by legislation expressly and specifically application thereto. *Missouri, Kansas & Texas Ry. Co.* v. *Roberts*, 152 U.S. 114. With regard to the disposition of minerals in Indian lands Congress down through the years has enacted a separate and distinct system of law comprising voluminous legislation, much of it relative to particular reservations such as the 1916 Act referred to herein. Certainly this body of special legislation applicable only to certain Indian lands in which the Indians have a real or beneficial interest cannot be said to comprise any portion of the "mining and mineral leasing laws of the United States" as that phrase is used in section 5 of Public Law 284.

It should also be pointed out that in 1924 the Attorney General of the United States expressly held that the general mineral leasing act of 1920 was not applicable to executive order Indian reservations for the reasons, *inter alia*, that such lands were not public domain lands and were not owned exclusively by the United States. (34 *Op. Atty. Gen.* 171). Conversely, it must be held that if the lands here under consideration *are* public domain lands owned exclusively by the United States, the general leasing act of 1920 is applicable, to the exclusion of other special legislation. By section 2 of Public Law 284, these lands were in fact restored to the public domain for administration, use, occupancy, and disposition under the reclamation and public land laws of the United States. Therefore, the lands hav-

ing achieved the status of public lands by legislative fiat, are subject to the leasing act exclusively applicable to public lands of the United States.

From the above it seems clear that the leases heretofore issued by the Department for the lands described in Public Law 284 were properly issued under the authority of the Mineral Leasing Act of 1920. These leases therefore constitute binding contracts between the United States and the lessees, which contracts are not subject, to arbitrary cancellation. In these circumstances the protestants' prayer that the outstanding leases be canceled must be denied.

In view of our conclusions that the Mineral Leasing Law of 1920 is applicable to the minerals here being considered, protestants' prayer that all pending applications therefor be rejected must also be denied. The question of the applicability of the special mineral leasing act of August 21, 1916, *supra*, has heretofore been decided in the negative.

For the reasons stated herein the protest of the Shoshone and Arapahoe Tribes of Indians is rejected in its entirety.

DOUGLAS MCKAY,
Secretary of the Interior.

September 22, 1955.

(3257-3)

Act of August 21, 1916, 39 Stat. 519

CHAP. 363—An Act To authorize the Secretary of the Interior to lease, for production of oil and gas, ceded lands of the Shoshone or Wind River Indian Reservation in the State of Wyoming.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and empowered to lease, for the production of oil and gas therefrom, lands within the ceded portion of the Shoshone or Wind River Indian Reservation in the State of Wyoming, under such terms and conditions as shall be by him prescribed; and the proceeds or royalties arising from any such leases shall be first applied to the extinguishment of any indebtedness of the Shoshone Indian Tribe to the United States and thereafter shall be applied to the use and benefit of said tribe in the same manner as though secured from the sale of said lands as provided by the Act of Congress approved March third, nineteen hundred and five, entitled "An Act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the State of Wyoming, and to make appropriations for carrying the same into effect": *Provided, however*, That nothing contained in this Act shall be construed to abridge or enlarge any asserted or initiated rights or claims under any law of the United States.

SEC. 2. That the leases granted under this Act shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, which shall not be less than one-tenth in amount or value of the production and the payment in advance of a rental of not less than $1 per acre per annum during the continuance of the lease. The rental paid for any one year to be credited against the royalties as they accrue for that year. Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years each upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of expiration of any such pe-

riod; said leases shall be irrevocable except for the breach of the terms and conditions of the same and may be forfeited and canceled by an appropriate proceeding in the United States District Court for the District of Wyoming whenever the lessee fails to comply with their terms and conditions.

Act of August 15, 1953, c. 509, 67 Stat. 592

CHAP. 509.—To provide compensation to the Shoshone and Arapahoe Tribes of Indians for certain lands of the Riverton reclamation project within the ceded portion of the Wind River Indian Reservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be transferred in the Treasury of the United States from funds now or hereafter made available for carrying on the functions of the Bureau of Reclamation and to be placed to the credit of the Shoshone and Arapahoe Tribes of Indians of the Wind River Indian Reservation in Wyoming, the sum of $1,009,500, said sum shall be credited to and expended for the benefit of said tribes and their members as provided by the Act of May 19, 1947 (61 Stat. 102), as amended by the Act of August 30, 1951 (65 Stat. 208), and by the Act of July 17, 1953 (Public Law 132, Eighty-third Congress), and as may be hereinafter amended, and shall be deemed to constitute full, complete, and final compensation, except as provided in section 5 of this Act, for terminating and extinguishing all of the right, title, estate, and interest, including minerals, gas and oil, of said Indian tribes and their members of, in and to the lands, interests in lands, and any and all past and future damages arising out of the cession to the United States, pursuant to the Act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Indian Reservation lying within the following described boundaries: [description appearing in statute here omitted].

Provided, That any member, or the heirs or assignees of any member, of either of said tribes, who on the 24th day of July 1952, had an existing and valid assignment on any

part of the above-described land, shall have the right, at his or her option, within one year after the date of enactment of this Act, to enter into a contract with the United States, by and through the Bureau of Reclamation, for the purchase, at a price and on terms satisfactory to the Secretary of the Interior of all or any contiguous part of such assignment, and upon final payment of the purchase price therefor, a fee patent accordingly shall be issued to such assignee, subject to reservations of all oil, gas and minerals to the United States, and subject to section 5 of this Act, and if any part of the land so selected shall contain land irrigable under the Riverton reclamation project, then said patented land shall be subject to all irrigation charges, taxes, and liens imposed by Federal or State law, to the same extent and in like manner as other lands of the Riverton reclamation project: *Provided further*, That all existing contracts relating to irrigation charges, with respect to such irrigable land, shall remain in full force and effect: *And provided further*, That nothing in this Act shall be construed to affect the rights and interests in and to any land embraced within the tract described herein that has been allotted to an individual member of either of the said tribes which, on the date of enactment of this Act, is held by the United States in trust for such member or his or her heirs.

SEC. 2. Subject only to the existing rights and interests which are not extinguished and terminated by this Act, all unentered and vacant lands within the area described in section 1 hereof, are hereby restored to the public domain for administration, use, occupancy, and disposal under the reclamation and public land laws of the United States: *Provided*, That the sale or other disposition of such lands shall be at rates and upon terms and conditions approved by the Secretary of the Interior: *Provided further*, That the average price of all such lands disposed of by sale shall be not less than $6.25 per acre.

SEC. 3. The sum transferred to the credit of the Shoshone and Arapahoe Tribes of Indians as aforesaid and the expenses of carrying out the provisions of this Act shall be nonreimbursable and nonreturnable under the reclamation laws of the United States. The net proceeds derived

from the disposal of said lands shall be covered into the general fund of the Treasury or into the reclamation fund as the Secretary of the Interior shall find appropriate in the light of the source from which the funds transferred or expended in carrying out this Act are derived.

SEC. 4. Subject to any outstanding rights and interests, all of the ceded lands of the Wind River Reservation withdrawn pursuant to the Act of June 17, 1902, for the development of the Riverton reclamation project, Wyoming, not included within the boundaries of the tract described in section 1 of this Act, are hereby restored to the ownership of said tribes to the same extent as the ownership provided by the Act of July 27, 1939 (53 Stat. 1128), with respect to vacant lands ceded to the United States under the provisions of the Act of March 3, 1905 (33 Stat. 1016), but not subsequently withdrawn for reclamation purposes: *Provided*, That the compensation authorized in section 1 hereof shall also be deemed to release the United States from any and all claims for damages whatsoeve, arising out of withdrawal of lands herein restored to tribal ownership.

SEC. 5. Notwithstanding any other provision of law, the United States shall deposit in the Treasury of the United States to the credit of said tribes, to be available for expenditure for the benefit of said tribes and their members, as provided by the Act of May 19, 1947 (61 Stat. 102), as amended by the Act of August 30, 1951 (65 Stat. 208), and by the Act of July 17, 1953 (Public Law 132, Eighty-third Congress), and as may be hereinafter amended, 90 per centum of the gross receipts of the United States, as they are received from time to time, from all leases, bonuses, royalties, or other proceeds derived under the mining and mineral-leasing laws of the United States from any and all lands in which all rights and interests of the tribes are terminated and extinguished by the terms and conditions of section 1 of this Act and which are embraced within the boundaries of the tract described in said section 1. Notwithstanding any other provision of law the remaining 10 per centum of such gross receipts shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

SEC. 6. Should this Act become law subsequent to June 30, 1954, there is hereby reserved to the Shoshone and Arapahoe Tribes the privilege of rejecting, within one hundred and twenty days after the date of the Act, the terms and conditions of its sections 1, 4, and 5. If those terms and conditions are rejected, no part of the Act shall become effective.

SEC. 7. The Secretary of the Interior is authorized to perform any and all acts to carry out the provisions and purposes of this Act.

(7976-4)

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No. 635

In the Supreme Court of the United States

OCTOBER TERM, 1957.

UNITED STATES EX REL. THE SHOSHONE INDIAN TRIBE, ET AL., PETITIONERS

v.

FRED A. SEATON, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The *per curiam* opinion of the court of appeals (Pet. App. 16–18) is reported at 248 F. 2d 154. The memorandum of the district court (Pet. App. 18–19) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 1957. The petition for a writ of certiorari was filed on December 3, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, as held by the courts below, a 1953 Act which "terminat[ed] and extinguish[ed] all of the right, title, estate, and interest, including minerals, gas and oil" of Indian tribes in certain lands and restored those lands to the "public domain for administration, use, occupancy, and disposal under the reclamation and public land laws of the United States," with the proviso that 90 percent of the proceeds "derived under the mining and mineral-leasing laws of the United States" should be paid to the Indians, placed those lands under the Mineral Leasing Act of 1920, as amended, which is generally applicable to public lands of the United States.

STATEMENT

By the Act of March 3, 1905, 33 Stat. 1016, Congress ratified an agreement whereby lands in the Wind River Reservation in Wyoming, which were owned jointly by the Shoshone and Arapahoe Tribes, were ceded to the United States. All of the proceeds from the sale of these lands "under the provisions of the homestead, town-site, coal, and mineral land laws, or by sale for cash" at designated prices were to be held in trust for the tribes. In 1916, Congress authorized the Secretary of the Interior to lease lands within this "ceded" area of the Reservation for oil and gas purposes "under such terms and conditions as shall be by him prescribed." Act of August 21, 1916, 39 Stat. 519. The Act provided a minimum royalty of 1/10, advance rental of not less than $1.00 per acre per year, and that the leases should be

for 20 years with a preferential right of renewal. The proceeds were to be applied first to extinguishment of debts of the Shoshone Tribe to the United States and thereafter applied to the use of the tribe as though secured from the sale of lands under the 1905 Act.

About 332,000 acres of the ceded land were reserved for reclamation purposes and the Riverton Reclamation project was constructed thereon under the Act of June 5, 1920, 41 Stat. 874, 915. By 1953, the tribes had been compensated for about 100,000 acres within the project which had been disposed of under the public land and reclamation laws. In the course of administering the project over the years, problems had accumulated as to compensation of the tribes for lands used for canals, ditches, roads, the Pilot Butte Reservoir and Ocean Lake. Sand, gravel, and other materials had been removed, both for reclamation purposes and for local governmental purposes. To settle all such matters, after an appraisal had been made, the Act of August 15, 1953, 67 Stat. 592, was passed. By Section 4, some 70,000 acres of land outside of the Riverton project were restored to tribal ownership. The remaining 161,000 acres, which is not a solid block but is interspersed with other lands, is the subject matter of this litigation.

The Act provides (Section 1) that $1,009,500 should be credited to the tribes

> and shall be deemed to constitute full, complete, and final compensation, except as provided in section 5 of this Act, for terminating and extinguishing all of the right, title, estate, and

> interest, including minerals, gas and oil, of said Indian tribes and their members of, in and to the lands, interests in lands, and any and all past and future damages arising out of the cession to the United States, pursuant to the Act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Indian Reservation lying within the following described boundaries: [description appearing in statute here omitted].

Section 2 restored unentered and vacant lands to the public domain for administration, use, occupancy and disposal under the reclamation and public land laws. Section 5 provided that the United States should deposit to the credit of the tribes 90% of the gross receipts "from all leases, bonuses, royalties, or other proceeds derived under the mining and mineral-leasing laws of the United States" from lands described in section 1.

Subsequently, applications were made, and oil and gas leases were issued, under the Mineral Leasing Act of 1920, as amended, through the Bureau of Land Management of the Department of the Interior. Since the lands were not within a known geologic structure, the leases were issued to the first applicant and not as a result of competitive bidding. In March 1955, counsel for the two tribes wrote letters to the Secretary of the Interior protesting the issuance of such leases. They contended that leasing should be pursuant to the 1916 Act and regulations thereunder, wherein competitive bidding was employed, and it was averred that the tribes were injured by the loss of substantial bonuses. They referred to nine leases

prior to the 1953 Act of 5,100 acres (revised downward in the petition (p. 5) to 4,400 acres) for bonuses totaling $667,171. The Assistant Secretary of the Interior replied, on April 22, 1955, stating that the leases were validly issued and were not subject to cancellation. A few days later, protests were filed with the Director of the Bureau of Land Management, copies were served on 48 lessees and their answers made part of the record. The Secretary, at the request of the tribes, assumed immediate jurisdiction of the matter. The grounds of the protests were considered at length and, by opinion of September 22, 1955, the Secretary rejected them, holding that the leases were validly issued and were not subject to arbitrary cancellation.

This proceeding was instituted by complaint filed November 10, 1955, seeking a preliminary injunction against approval of assignments of leases, a declaration that the lands were not subject to oil and gas leasing under the Mineral Leasing Act and a direction that the Secretary cancel all leases issued under that Act. The district court (McGuire, J.) granted a motion to dismiss on the ground that in the 1953 Act Congress had placed the lands within the public domain and that, accordingly, the 1916 Act no longer applied. The rule that the statute should be liberally construed in favor of the Indians could not, the court held, overcome the "plain meaning of plain words" in the statute and courts "have no power to remake or redraft them" (Pet. App. 19). The court of appeals (Edgerton, C. J., Danaher and Bastian, JJ.) affirmed, *per curiam*, expressing the view

that both the statute and its legislative history showed a plain intention to terminate all rights of the Indians, and that, although statutes terminating Indian property rights should be construed narrowly, "we cannot ignore the intention of Congress where it is perfectly plain" (Pet. App. 17–18).

ARGUMENT

Indisputably, petitioners will receive, under the 1953 Act, 90% of the proceeds from oil and gas leases on the lands purchased from them. The narrow issue is whether such leases are to be issued under the laws generally applicable to the public domain or under the Act of 1916 specially applicable to lands ceded by petitioners in 1905. This issue, we submit, poses no problem. It would, indeed, be inordinately difficult to draft a statute more explicit and unambiguous than the 1953 Act—"all of the right, title, estate, and interest, including minerals, gas and oil" of petitioners is terminated and extinguished (Section 1, Pet. App. 34), and unentered and vacant lands "are hereby restored to the public domain for administration, use, occupancy, and disposal under the reclamation and public lands laws of the United States" (Section 2, Pet. App. 35). Petitioners' argument is not one of construction of the statute at all. It could prevail only by deleting "minerals, gas and oil" from Section 1; and by amending section 2 to provide that "the surface only of all unentered and vacant lands" are restored to the public domain (cf. petition, fn. 8, p. 9). What is more, the provision of Section 5 relating to rental and proceeds

"derived under the mining and mineral-leasing laws of the United States" would have to be rewritten to refer to rentals and proceeds "derived under the Act of 1916."

The "policy" arguments of petitioners do not empower either the Secretary of the Interior or the courts to disregard the laws of Congress and to rewrite the statute. The alleged "compelling issue of public morality" and the claimed "arbitrary injustice of the Secretary's action" (Pet. p. 8) are matters which, if they possessed any validity, could only be settled by Congress. The fact is, as noted both in the Secretary's decision (Pet. App. 28) and the court of appeals' opinion (Pet. App. 16–18), Congress was advised that the bill would terminate all interest of the Indians in the lands, including the minerals, and the attorneys for the Indians at the hearings did not disagree.

There is no conflict with the cases cited by petitioners (pp. 10–14). Those cases do not remotely suggest a lack of Congressional power to extinguish all title of the Indians to particular lands. Instead, as shown by *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 164, the leading case on the subject, the question "depends in each case upon the terms of the agreement or treaty by which the cession was made." Petitioners' own citation (p. 10), *United States* v. *Mille Lac Chippewas*, 229 U. S. 498, answers the claim of conflict. There, the Court, adverting to an argument as to the Indians' understanding of an agreement, stated (p. 508) that "the Indians,

no less than the United States, are bound by the plain import of the act and the agreement".

CONCLUSION

The decision below is clearly correct, and there is no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1958.

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